THIRD ANNUAL MEETING

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

HELD AT THE

NEW WILLARD HOTEL, WASHINGTON, D. C.

ON

FRIDAY AND SATURDAY, APRIL 23 AND 24, 1909

MORNING SESSION

Friday, April 23, 1909

The meeting was called to order at 10 o'clock a. m. by the President of the Society, Hon. Elihu Root.

Mr. ROOT. Gentlemen of the Society: It is a pleasure to welcome you to Washington for the Third Annual Meeting of the Society. Many interesting things have occurred in the course of America's relations in international affairs during the year since our last meeting, enough to indicate that the business about which we are met is a live business, that it is a part of the movement of affairs in the world, and not a study in archæology.

During the year the relations between the United States and Japan, in the Far East, have been brought to a clear, distinct, and authentic statement and understanding, by means of a joint note, establishing those relations between the two great countries that face each other across the Pacific, relations of mutual friendship, respect for right, both as between each other, and respect for rights upon the mainland of China.

During the year the relations between the United States and our neighbor to the north — the Dominion of Canada — which borders upon us along more than three thousand miles of boundary, have been brought to a most satisfactory status, by the signing of a treaty which not only itself settles certain questions which had long been under negotiation, but provides for a permanent commission, which will, in effect, be a permanent international tribunal for the adjustment and disposition of questions to arise in the future between the two countries; and which lays down certain general rules for the guidance of this commission in respect of the disposition of waters through which the boundary line between the United States and Canada runs.

The relations between the United States and Great Britain in respect of the Newfoundland fisheries have been put in the way of final disposal, by the signing of an agreement under the general treaty of arbitration made last year between the United States and Great Britain, an agreement by which the questions relating to the meaning and application of the Treaty of 1818 as to the Newfoundland fisheries are to be submitted to a tribunal at The Hague.

Those questions, as you know, have been the subject of almost continuous discussion between the two countries, and constantly recurring ill-feeling and irritation, ever since the negotiations of the Treaty of Peace of 1782; and now we hope to get them finally settled by means of submission to this commission of general arbitration. The court which is to hear this great historic case has been selected in a way which I think is worthy of commendation, and is a cheerful augury for the future, for it was selected not by means of the carefully guarded method laid down in the Hague Convention for the disposition of international disputes, but, following that method in general, the selection for which that method provides was left out. Instead of Great Britain selecting one judge, the United States another — of their own nationals — Great Britain selecting a foreigner and the United States selecting another foreigner; and then those four coming together and selecting a fifth to be umpire and to really decide the case, the ambassador of Great Britain and the representative of the United States sat down together and took a list of the

judges then constituting the Hague tribunal, and picked out five judges, upon whom they both agreed, as men who would decide the case judicially, who are not politicians, not diplomatists really, but judges. Those five are: Prof. Heinrich Lammasch, of Austria; Chief Justice Fitzpatrick, of Canada; Judge George Gray, of the Circuit Court of Appeals; A. F. de Savornin Lohman, member of the Second Chamber of the Netherlands States-General; and Dr. Luis M. Drago, formerly minister of foreign affairs of Argentina.

The long-standing differences between the United States and Venezuela, arising largely from the peculiar characteristics of the singular individual who has occupied the office of President of Venezuela for a number of years, have been brought to a most satisfactory conclusion. Through the very exceptional good judgment and skill of Mr. William I. Buchanan, who went as a special commissioner to Venezuela in December last, for the purpose of arranging terms for the reopening of diplomatic intercourse between the United States and Venezuela, a part of the questions that exist have been actually settled and finally disposed of, and as to the remainder arrangement has been made for arbitration at The Hague. In the provisions for arbitration of these Venezuelan questions the same principle to which I have referred as governing in the selection of the Hague Tribunal for the Newfounland cases was to apply in another way. Three judges were to be selected there, no one of whom was to be a national of either power, so that there we shall have a court and not a meeting for negotiation and settlement — compromise — but a court for decision.

The relations between the United States and Colombia and Panama have been brought to a tentative basis of satisfactory adjustment, by means of three treaties which have been signed: a treaty between the United States and Panama, one between the United States and Colombia, and a treaty between Colombia and Panama, being really a tripartite arrangement, in the form of three simple instruments, each one, however, being dependent upon the final ratification of one of the others. Those treaties have been ratified by the government of Panama and by the government of the United States, and they await action by the government of Colombia.

The convention signed at The Hague by the members of the Peace Conference of 1907, for the establishment of an international prize court, was, as you remember, held in abeyance by Great Britain, pending an attempt to come to some better understanding as to what principles of law were to be applied by the court. The convention establishing the court provided that the court was to decide, in accordance with the rules and principles of international law, and that where there was no rule of international law to govern a given case the court was to decide in accordance with the principles of justice and equity. Great Britain suggested a conference between a number of the leading maritime powers, for the purpose of getting some understanding as to what were to be regarded as the principles of justice and equity applicable to prize cases. That conference has been held, and, after a very laborious and difficult struggle between many conflicting views, has reached most satisfactory conclusions, upon almost the entire field, so far as we can see it, to be covered by the application of the principles of justice and equity in prize cases. There is an agreement between the great maritime powers, and that conclusion will be the subject of exposition and comment by Admiral Stockton, who took a very prominent and distinguished part in the conference; and some further comment upon that will be given, I believe, by Admiral Sperry, who has been much interested in it as an on-looker.

The general relation of the United States to international law has been, as I described it to you last year, further progressed by a continuation of the establishment of a general system of treaties of arbitration, and that system during the year has been made to extend over substantially the whole of South America, so that now there are but a very few exceptions either in Asia, Europe, or America to the relation with the United States established by the general treaty of arbitration, following the Franco-British form.

The number of treaties of the United States now in use is twenty-four.

I think that about covers the main incidents.

In accordance with the custom which Dr. Scott has established, almost against the will of the President of the Society, I shall detain

you for a few minutes by some remarks on the specific theme: "The relations between international tribunals of arbitration and the jurisdiction of national courts."

ADDRESS OF THE PRESIDENT OF THE SOCIETY, MR. ELIHU ROOT, OF WASHINGTON, D. C.

The growing tendency towards international arbitration brings into special consideration and importance the relation between the jurisdiction of national courts of justice and international tribunals of arbitration.

When one nation urges claims in behalf of its citizens upon the government of another nation and proposes arbitration, how far does that other nation's respect for its own independent sovereignty and for the integrity of its own judicial system require it to insist that the claims be submitted for final decision to its own national courts?

The true basis for the consideration of this question is in the nature of the obligation which constrains a nation to submit questions to any tribunal whatever.

That there is no legal obligation to make any submission, that is to say, that it is not required by any rule imposed by a superior power, is a corollary from our conception of sovereignty. Sovereignty involves the right to determine one's own actions — to pay or not to pay, to redress injury or not to redress it, at the will of the sovereign, subject only to the necessary conditions created by the existence of other equally independent states. So far as questions arise out of contract, Alexander Hamilton states the strongest view of national freedom from restraint in a passage often quoted in recent years:

> Contracts between a nation and private individuals are obligatory, according to the conscience of the sovereign, and may not be the object of compelling force. They confer no right of action contrary to the sovereign will.

So far as questions arise out of alleged wrongs by one government against a citizen of another, the sovereignty of one nation is merely confronted by another sovereignty, which is itself equally supreme